IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.332 Of 2007.
Judgment Reserved on: 09.04.2007.
Date of decision : May 4th, 2007.

Baldev Singh. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

Coram
The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr.Bipin C. Negi, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Dy.Advocate General, for respondents No.1 & 2.

Mr.Manohar Lal Sharma, Advocate, for respondent No.4.

Surinder Singh, J.

The instant petition has been filed by the petitioner under Article 226 and 227 of the Constitution of India for issuance of an appropriate writ, order or direction to the respondents.

The questions which have arisen before us are:

(1) **Whether a teacher appointed by the Parent-teachers Associations (PTA) is a holder of the "Civil post" under the State?**

(2) **Whether the H.P. State Administrative Tribunal has jurisdiction to try and determine the matter under Section 15 of the Administrative Tribunal Act, 1985?**

We have heard Shri B.C. Negi, learned counsel for the petitioner, the learned Advocate General Shri M.S. Chandel and Shri Manohar Lal Learned Advocate for the respondent No.4 Smt. Sunita Kumari.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

The controversy in this petition relates to the selection to the post of Lecturer (History) in Govt. Senior Secondary School Tatiana, Tehsil Paonta Sahib, District Sirmaur, HP, made by the Parents Teacher Association (PTA) of the concerned School.

The petitioner, herein along with 14 others was a candidate for the said post and he appeared in the interview held by the Selection Committee of PTA consisting of President of PTA, Shri Jalam Singh, Sonu Kumar (Trained Graduate Teacher non-Medical) Sh. Harbans Singh (Lecturer in Economics) and Shri P.M. Sharma, Principal of the school aforesaid. The Secretary of PTA is alleged to have issued the appointment letter to Smt. Sunita Kumari respondent No.4 who allegedly had not appeared in the interview. Therefore, her appointment was objected to by the PTA. In a meeting of the General House of the PTA held on 6.11.06, the appointment of Smt. Sunita Kumari was cancelled vide resolution Annexure P-3. The Secretary of the PTA, who had issued the appointment letter to Sunita Kumari resigned from the post of Secretary of the PTA on the same date and the resignation was accepted vide the same resolution. Thereafter the PTA appointed the petitioner as Lecturer (History) in the said school, vide appointment letter Annexure P-4, issued by the chairman of PTA which reads as under:-

"To

Sh. Baldev Singh,
V&P.O. Kanti-Marhwa.

Sir,

As per decision taken by PTA GSSS, Tatiana, you are hereby appointed as Lect. History on PTA basis. You are directed to join your duty within a fortnight.

Sd/-
Zalam Singh dated 6.11.06
Chairman,
PTA
GSSS Tatiana
Distt. Sirmaur."

Against this appointment, Smt. Sunita Kumari filed O.A. No.3436/2006 before the H.P. Administrative Tribunal impleading the petitioner as respondent No.6.

The original application was taken up by the learned Tribunal on 1.12.2006. On the said date, the learned Tribunal passed the following order:

> **"Notice returnable within five weeks with directions to file replies. The learned Dy. Adv. General appears and waives service of notice on behalf of respondents 1 and 2. Hence notice need not be issued to them.**
>
> **It is prima facie evident from the contents of Annexure-A/8 that respondent No.6 has been appointed without requisite process and even interview, therefore, respondents 1 and 2 will ensure that respondent No.6 is not permitted to teach in the school to which he has been allegedly appointed."**

This order was passed in the absence of the present petitioner and notice was issued to the petitioner to appear on 12.1.2007. In purported compliance of the aforesaid order dated 1.12.2006, respondent No.6 who had already joined was not permitted to teach in the School w.e.f. 2.12.2006 and Smt. Sunita Kumari was reengaged on 6.12.2006.

The petitioner was not served with the notice and on 12.1.2007, the petition was disposed of by the learned Tribunal in the following terms:-

> **"12.01.07: Present: Sh. Manohar Lal Sharma for the applicant.**
>
> **Sh. D.C. Pathik, Addl.Advocate General the respondent-State.**
>
> **The learned Advocate General has produced a letter issued by the Director of Higher Education HP dated January 3, 2007 vide which it has been submitted that in compliance of the order of Administrative Tribunal on dated1-12-06 the respondent No.6 (the present petitioner) is not being permitted to teach in the School w.e.f. 2.12.2006 and the applicant (the respondent No.4 herein) has been re-engaged on 5.12.2006 and joined her duties in the School on 6.12.2006.**

Copy of this letter be taken on record, In view of this position, the present application has become infructuous. Original Application stands finally disposed of.

Sd/-
Vice Chairman

Sd/-
January 12, 2007. Member (A)"

In the present petition, the main contention of the petitioner is that the order of the learned Tribunal is without any jurisdiction since the petitioner was not appointed to a civil post and therefore the learned Administrative Tribunal had no jurisdiction to hear the matter. It is not disputed before us that the learned H.P. State Administrative Tribunal can only hear the service matters relating to any civil service of the State or of any civil post under the State or of any local body and other authorities under the control of State Government or any Corporation/ Society in and controlled by the State Government.

To understand the rival contentions of the parties, it would be necessary to refer to the H.P. Education Code, 2003 under which the Parent Teacher Association is formed.

Para 2.33.2 of the new Code provides for the formation of the **Parent Teacher Association (PTA)**. All the parents or guardians of the students studying in the school and teachers of the school are the members of the general Body of the PTA, **two** persons with technical expertise and know how and integrity, are co-opted as its members and adopted by the general house. The membership-fee is charged annually. The objectives of the Parent Teacher Association are provided in **para-2.33.1**, and are produced as under:-

"2.33.1 Objectives of Parent Teacher Association:

1. **To revive the relationship between the parents and teachers.**
2. **To create the healthy educational environment in schools.**
3. **To arrange time to time discussions with the elder persons of the society and to incorporate their suggestions for the improvement of the educational standard in the schools.**
4. **To suggest ways so that the students education is promoted.**

5. **To make a collective effort to improve the conduct of the students and also to restrict the entry of anti-social elements in school campus.**
6. **To inform the parents/ guardians about the performance of their wards from time to time, and to make arrangements for the parents to meet the concerned staff once in a quarter.**
7. **To make arrangement for teachers etc. when there is shortage of staff in the institution as a temporary measure.**
8. **To make the parents aware of various schemes of the Govt. in the area of education and also to give information about various activities and programmes of the department at school, district and state level.**
9. **To make a collective effort for the overall development of the organization and students, by arranging at least one meeting of P.T.A. executive quarterly and that of its general house once in a year, giving top most priority to students welfare." (Emphasis supplied)**

Thus it is seen that amongst other, the object of PTA is also to make arrangement for the teachers etc. in case there is shortage of staff in the school as a temporary measure. The General House further elects the Executive Council. The Principal or the Headmaster of the institution is the Chairman of the executive council. President and Vice President are elected from amongst the members of the P.T.A. The duties of the Secretary are performed by a Teacher/Lecturer of the same institution, whereas Joint secretary is elected from amongst the parents/guardians. The Council is responsible for the working of the PTA and can take the help of those members who have been registered during the general session of PTA. Amongst others the Council has power to collect fee; donation and aid etc. Para 2.33.5 of the Education Code provides for the sources of income of PTA which include membership fee, donations, grants and aid from the government and other organizations.

The State Government has decided to provide the grant in aid to PTAs on fulfilling certain conditions wherever considered proper. It has framed the "**Grant-in-Aid to Parents Teachers Associations Rules, 2006**." These rules inter-alia govern the grant-in-aid to the PTAs. It is the sole discretion of the State Government to award grant in-aid to the PTAS on such terms and conditions as it

considered appropriate. **Rule-5** thereof provides that in case a teacher is made available by the P.T.A., with the prior approval of the Principal for the regular day to day teaching of students in an educational institution, it shall make an application for grant-in-aid in the prescribed form as provided therein but such a grant shall not be admissible to the PTAs in respect of a teacher made available by it who does not fulfill the educational qualifications fixed by the Government in respect of posts under it for teaching the same subjects/classes. Rule 8 provides that this grant-in-aid shall not exceed 50% of the amount of the initial basic salary plus dearness pay, which a similar employee of the Government receives per month. There is a proviso added to it that the grant-in-aid in respect of a teacher shall not exceed the amount actually paid by the P.T.A. to the teacher. As per Rule-10, it is within the sole discretion of the Principal of the educational institution, who may allow the teacher(s) made available by the P.T.A. to enter the premises and teach the students of the educational institution. The teachers made available by the P.T.A. when allowed by the Principal of the educational institution as aforesaid shall remain under the administrative control of the Principal of the educational institution.

The teachers are made available by the PTA, but the Grant-in-Aid, is not admissible to the P.T.A. in respect of a teacher made available by it, if such teacher does any thing which a teacher employed by the Government is restrained from doing and the grant-in-aid would be admissible only in respect of such teachers made available by the P.T.A. whose work and conduct is found satisfactory by the Principal of the educational institution (Please see Rule-11)

On 2nd// 19th August, 2006, the Director of Education issued clarifications/ administrative instructions on `Grant-in-Aid' to PTA Rules 2006. The body of the letter is reproduced as under:-

"Your attention is invited to Notification No.EDN-A-(Kha)7-3/2006 dated 29-06-2006 (copy enclosed) vide which the "Grant-in-Aid" to Parents Teachers

Associations Rules, 2006 have been notified. While implementing these rules, you must keep following in mind:-

1. The Principal is the most important person for the implementation of these rules. As per Rule 10, the grant-in-aid to PTA is admissible at the discretion of the Principal. Similarly under rule 12 the grant-in-aid would be admission only in respect of such teachers made available by the PTA whose work and conduct is found satisfactory by the Principal. The grant-in-aid is also released on the recommendation of the Principal. Therefore keeping in view his important role, the Principal should discharge his duties carefully. He/She should also read the rules carefully.

2. Rules and regulations framed for Parent Teacher Associations in H.P. Education Code 2001 are to be followed. The provisions relating to membership, elections to offices, tenure of PTAs and its members, subscription by members, etc. is outlined under Section 2.33 to 2.33.7 of the H.P. Education Code 2001(copy enclosed), should be strictly followed.

3. It may be remembered that as per H.P. Education Code minimum enrolment of 15 students in a class/ subject should be followed while accepting a teacher provided by the PTA.

4. Since the Principal has such a pre-eminent role in the implementation of this scheme, he should distance him self from the selection of candidates by the PTA. He should advise the PTA to constitute a selection comprising of the following:-

i) President, P.T.A. (Parent)

ii)Secy., P.T.A. (Teacher)

iii)Subject specialist/ expert. The selection committee should preferably not have more than three members. If subject specialist/ expert is not available in the institution, then expert may be invited from a neighboring institution on the request of PTA.

5. The appointment letter should be issued by the PTA. The P.T.A. should writ then to the Principal making available the teacher with full details.

6. Regarding Educational qualification, it may be noted that the rules nowhere debar appointment of teachers by P.T.A.s who don't have qualification as prescribed for regular recruitment. However, grant-in-aidwill not be admissible to such PTAs who make available teacher without prescribed qualification.

7. <u>There is no age bar in the grant-in-aid rules. Even retired teachers can be appointed by the PTAs but their working is subject to satisfaction of the Principal.</u>

8. It may be noted that there is no bar/ban on recruitment by PTAs and making the services of teachers available to an institution.

9. The Principal of the concerned institution, while submitted a claim would submit the character antecedent verification report of the teachers made available by the P.T.A., duly certified by the Sub Divisional Magistrate instead of any Gazetted Officer.

The Deputy Directors of Higher Education are directed to ensure that all Principals and PTAs receive copies of the grant-in-aid to PTA Rules, 2006 and that the scheme is implemented properly.

Sd/-
Director of Higher Education,
Himachal Pradesh."

Against the above factual background, it has to be seen whether the teacher(s) employed by the PTA are the holders of a "**Civil Post**". There is no formal definition of the term `**Civil Post'** under Article 311 of the Constitution. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State.

In ***State of Assam and others*** v. ***Kanak Chandra Dutta*** **[(1967) 1 SCR 679],** a Constitution Bench of the Supreme Court was dealing with a case where a Mauzadar was appointed for collection of land revenue under the Mauzadari System prevailing in the Assam Valley, whose primary duty was to collect land revenue and other government revenues. He was working as revenue Officer and ex-officio `Assistant Settlement Officer', exercising delegated powers of the Government and the State had the power and right to select and appoint him and also had the power to suspend and dismiss him. The Mauzadar was not drawing a regular salary but commission by way of a remuneration. The Hon'ble Apex Court observed that there must be existence of relationship of master and servant between the State and its employees and such a relationship can be established by presence of all or some of the ingredients. After due consideration of the entire matter the Supreme Court laid down the following principle of law:-

"Judged in this light, a Mauzadar in the Assam Valley is the holder of civil post under the State. The State has the power and the right to select and

appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State."

In **Superintendent of Post Offices etc.etc** v. **P.K. Rajama etc.etc. (1977) 3 SCR 678: [1977 (2) S.L.R. 226 (SC),** the Supreme Court was considering the case whether extra departmental agent held a civil post and for his dismissal or removal the provision of Article 311(2) of the Constitution was applicable. The Apex Court laid down that an extra departmental agent held a civil post and his dismissal or removal would be invalid if there was infraction of provisions of Article 311 (2) of the Constitution as it then stood. The Court observed that extra departmental agent was not a casual worker but he held a post under the administrative control of the State and the relationship between the postal authorities and the extra departmental agent was that of a master and servant.

Further in case of **State of Gujarat & Anr**. vs. **Raman Lal Keshav Lal Soni & Ors.**, **(1983) 2 SCC 33: [1983 (1) SLR 581 (SC)],** again a Constitution Bench of the Supreme Court was considering the question as to whether the Panchayat Service constituted under Section 203 of the Gujarat Panchayat Act was a civil service of the State and the members of the service were Government servants. The Apex Court after due consideration enumerated the following indicias for deciding whether a particular person is a member of civil service of the State and a Government servant in paragraph 27 which runs thus:-

> **"We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's, manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State of not."**

Further in **State of U.P. and others** v. **Chader Prakash Pandey and others [2001(2) SLR, 410],** the Hon'ble Supreme Court was considering a case of Kurk Amin appointed by the District Magistrate/ Collector within the State and on the strength of the **Kanak Chandra Dutta's case, Venkata Swami, P.K. Rajamma and Raman Lal Keshav Soni cases (supra),** came to the conclusion that Kurk Amins were the employees of the State Government holding a civil post under Article 311(2) of the Constitution. Hence, they were held to be the members of service and as such the Government servants.

Recently the Supreme Court in case **State of Karnataka and Ors**. vs. **Ameerbi and Ors**. **[2007 (3) SLR (SC) 722]** inter alia while examining the case of Anganwari workers, whether they are holders of civil post, had an opportunity to have a relook of the above mentioned decisions rendered by the apex court and observed that each of the decisions referred to above centers round application of a statute. In all those cases, posts are statutory ones. Terms and conditions of

services holder of the posts were governed by the statutes. However, on the examination of the facts, the Supreme Court held that different tests are applicable for determining the relationship of employer and employee. Since the Anganwari workers were not appointed under a scheme which is not of a permanent nature although continued for a long time, however rules framed under Article 309 would not be applicable, thus, they are not holders of the civil post.

In the instant case, PTA teachers are also appointed like Anganwari workers under separate scheme. The difference is only that the Anganwari workers are appointed under the "Integrated Child Development Scheme" floated and funded by the Central Government and the State appoints the Anganwari workers, whereas, the PTA. Scheme is floated by the State Government and their appointment is made by the PTAs. The teachers appointed by the PTAs are paid by them, out of their own fund. Government only provides grant-in-aid. Thus, the case of the Anganwari workers was better than the case of the teachers appointed/employed by the PTAs. In para 30 and 31 in **Ameerbi's case** supra, the Supreme Court observed as under:-

> **"30. Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter there into. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-à-vis cases or this nature who are sui generis. Terms and conditions of services of an employee may be referable to acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.**
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> **31. The result of an appointment being made in violation of the constitutional scheme has recently been noticed by a Constitution Bench of**

this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others, JT 2006 (4) SC 1: [2006(3) SLR 1(SC] "

On the examination of few other judgments including the ones referred above, the Apex Court held that the question has to be determined having regard to the issue involved and decided that the Anganwari workers were not holders of any civil post and the Tribunal was not having the jurisdiction to entertain the application.

It is in the light of the aforesaid law laid down by the Apex Court we have to decide the question as to whether the teachers appointed by the PTA are holders of civil post or not. As noticed above, the appointment is not made by the State Government, but by the PTA. There is no age limit prescribed; there are no essential qualifications prescribed. In each School, there is a separate Parent Teacher Association. The grant-in-aid is provided by the State only in respect of those teachers who are duly qualified and appointed with the approval of the Headmaster. No doubt, the Headmaster being the head of the School has to supervise the work of the teachers so appointed, but this does not mean that it is the State who is the supervising authority. From the PTA Scheme, relevant portion of which has been extracted hereinabove, it is apparent that the State Government has neither the power to appoint a teacher nor can take any disciplinary action against the teacher under this scheme. It has no power to dismiss the teacher. The State has virtually no administrative control over the teachers appointed by the PTA. The PTA has to make arrangements for the teacher on short terms basis. The teacher so appointed may not have the minimum educational qualification also. Even a retired person can be appointed as PTA teacher. Merely because the teachers may be functioning under the supervision of the Headmaster, it cannot be said that they are holders of `Civil Posts' or that they have entered into civil service. Even the salary of the petitioner appointed is paid by the PTA and the

State Government contributes by giving grant-in-aid, that too, only on fulfillment of certain conditions.

Keeping in view of the aforesaid facts, we are of the considered view that persons appointed, as teachers by the PTA are not holders of a civil post in the State and are not members of any civil service. Therefore, the first question is answered accordingly.

Since we have held that the teachers appointed by the PTA are not holders of civil post in the State, the obvious corollary is that the learned Administrative Tribunal has no jurisdiction to try and entertain an application in respect of such teachers. In the light of the above discussion, we have no other option but to hold that the learned Tribunal had no right or jurisdiction to entertain the present original application filed by respondent No.4 and therefore, we accordingly set-aside the order dated 12.1.2007 passed by the learned Tribunal in O.A. No.3436 of 2006.

Before parting with the case, we must observe that the manner in which the PTA has made the appointment and changed the same does not behove well for the functioning of the PTA. Frequent changes of the teachers will obviously result in adversely affecting the studies of the students. The PTA should be circumspect in making such changes time and again. Therefore, even though we have allowed the petition, we permit the respondent No.4 to continue as a teacher till the end of the present academic session. We further direct that the PTA, respondent No.3 herein, shall in the meantime issue fresh advertisements for filling up the post of Lecturer in History in Government Senior Secondary School Tatiana, Tehsil Paonta Sahib, District Sirmaur, H.P, and after holding interview shall make appointment for the next academic year, in case the post is not filled up on regular basis. The petitioner as well as respondent No.4 shall be free to appear in the said interview.

The writ petition is disposed of with the aforesaid directions.

(Deepak Gupta)
Judge.

May 4, 2007.
(Pds)

(Surinder Singh)
Judge.